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No. 544

In the Supreme Court of the United States

October Term, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

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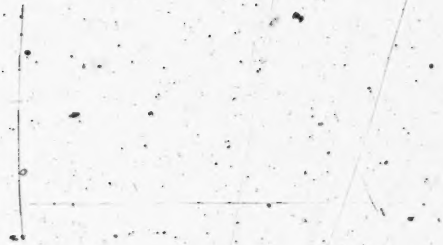

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OPINIONS BELOW

The opinion of the district court (R. 134) is reported in 7 F. R. D. 456. The opinion of the district court in the related criminal proceeding against appellees (R. 91) is reported in 7 F. R. D. 393.

JURISDICTION

The decree of the district court was entered on October 15, 1947 (R. 162). Petition for appeal was filed on December 3, 1947, and was allowed the same day (R. 190). The jurisdiction of this Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of

the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 58 Stat. 272; 15 U. S. C., Supp. V, 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938; 28 U. S. C. 345). Probable jurisdiction was noted on February 9, 1948 (R. 195).

QUESTIONS PRESENTED

1. Whether the doctrine of *forum non conveniens*, if applicable at all to a civil suit by the United States under the antitrust laws, has any application to such a suit where, as here, there was substantial basis for the venue selected and, in addition, a proceeding therein will not impose any unwarranted burden upon the defendants or upon the court of the forum.

2. Whether the special venue provisions of Section 12 of the Clayton Act were intended by Congress to give to the plaintiff a choice of venue not defeasible upon the basis of *forum non conveniens*.

STATUTES INVOLVED

Sections 4 and 5 of the Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 4, 5) commonly known as the Sherman Act, provide as follows:

> SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at

any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 12 of the Act of October 15, 1914, 38 Stat. 730, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

STATEMENT

This is an equity suit brought by the United States in the Federal District Court for the Southern District of California, Central Division (Los Angeles), charging nine corporations with conspiring to acquire control of a substantial number of local transportation companies in various cities of the United States, and to restrain and monopolize commerce in busses, tires, tubes, and petroleum products sold to these local transportation companies, in violation of Sections 1 and 2 of the Sherman Act (R. 5).

All of the appellees moved to dismiss the complaint on the ground that the District Court for the Southern District of California was not a convenient forum in which to try the cause, and that the District Court for the Northern District of Illinois, Eastern Division (Chicago), was the most convenient forum. After the filing of supporting and

opposing affidavits and oral argument, the district court rendered an opinion holding that appellees' motion to dismiss should be granted (R. 134-145), and it entered judgment dismissing the complaint without prejudice to commencement of a similar suit against the named defendants in a more appropriate and more convenient forum (R. 162-163).

The states in which appellees are incorporated and their principal places of business are as follows (Fng. 1, R. 152),[1]

Corporation	*State of Organization*	*Principal Place of Business*
National City Lines, Inc.	Delaware	Chicago
American City Lines, Inc	"	"
Pacific City Lines, Inc.	"	Oakland
Standard Oil Co. of California	"	San Francisco
Federal Engineering Corp.	California	"
Phillips Petroleum Co.	Delaware	Bartlesville, Okla.
General Motors Corp.	"	Detroit, Mich.
Firestone Tire & Rubber Co.	Ohio	Akron, Ohio
Mack Manufacturing Corp..	Delaware	New York

The facts alleged in the complaint may be summarized as follows:

National is a holding company whose operations are directed from its office in Chicago, Illinois (R. 3). It and its subsidiaries, American and Pacific, own, control, or have a substantial financial interest in, a number of corporations engaged in providing local transportation service in more than 42 cities and governmental subdivisions of 16 different states (*ibid.*) [2] Such corporations will be sometimes referred

[1] Appellees will be hereafter referred to by the first word of their respective corporate titles, except that General Motors Corporation will be referred to as "General Motors"

[2] The cities include: Baltimore, Maryland; Tampa, Florida; Mobile, Montgomery, Alabama; Beaumont, Port Arthur, El Paso, Texas, Aurora, Elgin, Bloomington, Normal, Champaign, Urbana, Danville, Decatur, East St. Louis, Joliet, Quincy, Illinois; Terre Haute, Indiana; Jackson, Kalamazoo, Pontiac, Saginaw, Michigan; Canton, Portsmouth, Ohio; Burlington, Cedar

to as operating companies, and National, American and Pacific will be sometimes collectively called City Lines.

Five other appellees, which will be called the supplier appellees, are engaged in making certain products which they have sold to City Lines in the following amounts: General Motors, motorbusses in excess of $25,000,000; Mack, motorbusses in excess of $3,500,000; Firestone, tires and tubes now annually in excess of $450,000; Phillips, petroleum products now annually in excess of $900,000; Standard, petroleum products to companies operating in the States of California, Utah and Washington (R. 4-5).

The remaining appellee, Federal, is a wholly-owned subsidiary of Standard engaged in making and managing investments on behalf of Standard (R. 2).

Appellees have, as a part of their conspiracy, agreed upon the following things, among others: That the supplier appellees would furnish money and capital to National, American and Pacific, which these appellees would use to purchase or secure control of local transit systems; that City Lines would purchase substantially all its requirements of busses, tires, tubes, and petroleum products from the supplier appellees; that, without the consent of the interested supplier appellee, City Lines would not renew any contract for the purchase of such products from other than the supplier appellees and would not make any change in equipment involving use of such products of a type other than that sold by the supplier appellees; and that City Lines would not dispose of any interest in an operating company without requiring the purchaser to continue to obtain its requirements of such products from the supplier appellees (R. 5-6).

Rapids, Ottumwa, Iowa; Tulsa, Oklahoma; Lincoln, Nebraska; St. Louis, Missouri; Jackson, Mississippi; Salt Lake City, Utah; Everett, Spokane, Washington; Sacramento, Eureka, Fresno, Glendale, Pasadena, San Jose, Stockton, Los Angeles, Oakland and Long Beach, California (R. 3-4).

It has also been a part of appellees' conspiracy that the requirements of City Lines for busses, tires, tubes and petroleum products would be allocated among the supplier appellees as follows: To General Motors, about 85% of the busses required by the operating companies controlled as of August 2, 1939, and about 42.5% of the busses required by operating companies thereafter brought under National's control; to Mack, about 42.5% of the busses required by operating companies coming under National's control after August 2, 1939; to Standard, substantially all petroleum products required by companies operating on the Pacific Coast and adjacent areas; to Phillips, substantially all petroleum products required by companies operating in the Mid-West;[3] to Firestone, substantially all requirements of tires and tubes (R. 7-8).

The supplier appellees have purchased stock in National, American, and Pacific, substantially all the proceeds of which purchases have been used to acquire control of or a financial interest in local transit systems (R. 7). The amounts paid for stock so purchased have been approximately as follows (*ibid.*):

Supplier Appellee	*Amount Paid for Stock*
Standard, Federal	$2,074,310
General Motors	3,190,802
Phillips	1,574,064
Firestone	1,383,403
Mack	1,300,071

The Government in its prayer for relief requested that the supplier appellees be required to divest themselves of all stock or other financial interest in City Lines; that all existing sales or investment contracts between the

[3] The Mid-West area referred to includes the States of Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota (R. 8).

supplier appellees and City Lines be voided; that City Lines be enjoined from purchasing busses, tires, tubes, or petroleum products without first advertising for competitive bids in accordance with a plan to be incorporated in any final order entered by the court; and that National, American and Pacific be ordered to make such disposition of their interests in local transportation companies as is necessary to dissipate the effects of appellees' conspiracy, and be enjoined from acquiring any further interest in any such company without first obtaining the approval of the court (R. 9).

The Government's complaint was filed in April, 1947 (R. 1). Motions to dismiss the complaint upon the ground of *forum non conveniens* and amended supplemental motions to dismiss were filed by all appellees in August and September, 1947.[4] All of the motions were based upon the affidavits filed by City Lines in support of their motions and only Mack and Firestone filed separate supporting affidavits.[5]

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[4] Original motions to dismiss: Mack (R. 11), Standard and Federal (R. 22), City Lines appellees (R. 60-61), Firestone (R. 68), General Motors (R. 69), Phillips (R. 71).

Amended motions to dismiss: City Lines appellees (R. 73), Phillips (R. 105), Firestone (R. 106), Mack (R. 108), General Motors (R. 110), Standard and Federal (R. 111).

The amended motions gave as an additional reason for dismissing the complaint, that the district court had entered an order (R. 102-103) transferring a companion criminal case to the Federal District Court for the Northern District of Illinois, Eastern Division.

[5] The gist of the affidavit supporting the Mack motion was that its principal offices are in New York and that Chicago, being much closer to New York than is Los Angeles, would be, as to Mack, a more convenient place for trying the cause (R. 15-17). The two affidavits filed in support of Firestone's motion allege primarily (1) that since Firestone's principal place of business is Akron, Ohio, trial in Chicago would be much more convenient than in Los Angeles, and (2) that papers subpoenaed from Firestone involving its relationship with National disclosed the names of 16 members of the Firestone organization, that the Government or Firestone might call a substantial number of these executives as witnesses, and that all but one of them are residents of Akron or Chicago (R. 117-119).

The affidavits of City Lines aver:[6]

As to practically all of National's 100% subsidiaries, with the exception of Pacific's subsidiaries, their purchases of supplies have been arranged in Chicago, their other operations have been supervised in Chicago, and their books of account have been kept there. All contracts with National or American under which the supplier appellees invested in securities of these companies or under which the operating companies purchased some of their requirements of busses, tires, tubes, and petroleum products from the supplier appellees, were negotiated and agreed upon "principally" in Chicago. (R. 25-26.)

Pacific was organized in May 1938 at the instance of National, Standard, General Motors, and one non-defendant company. In December 1940 National sold its stock interest in Pacific and from then until July 1946 most of Pacific's stock was owned by certain of the supplier appellees. In July 1946, pursuant to an earlier agreement, stock of National was exchanged for all outstanding stock of Pacific. Until April 1940 Pacific's main office was in Chicago. Since then its main office has been in Oakland, California, and it has been managed and operated from that city. Its "general policies" are at present directed from Chicago. (R. 26-27.)

The trial will probably take "a number of weeks." It is likely that the number of witnesses will be at least 100. Many "essential" witnesses will come from various parts of the country, but "largely" from the Chicago area. Six executive officers of National, who reside in or about the

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[6] These affidavits are: one by the president of National (R. 23), one by its counsel of record in the present case (R. 74), and two by a member of the New York law firm which is National's general counsel (R. 120, 123). The second of the foregoing affidavits incorporated by reference (R. 76) three affidavits which had been filed in the companion criminal case against appellees (R. 166, 175, 180).

Chicago area, and a number of "key" employees on its accounting staff, will have to attend throughout the trial. (R. 28-29.)

Trial of the criminal proceeding in Chicago and trial of the civil action in Los Angeles would require defense of the same cause of action in widely separated forums and the retention by each corporate defendant of local counsel in both places, with consequent unnecessary expenditure of time and money (R. 121-122).

An opposing affidavit filed in behalf of the United States by one of the counsel who had participated in the investigation resulting in the filing of the present suit (R. 112), avers:

All supplier appellees except Mack and Phillips are found and transact business on a large scale in the southern district of California and Mack does business in that district through a wholly-owned subsidiary. W. Ralph Fitzgerald, vice president and operating manager of National and one of the two officers of National in charge of the purchase of busses, tires, tubes, and petroleum products for its operating subsidiaries, lives in Los Angeles and supervises National's operations on the Pacific Coast. (R. 113.)

The evidence which the Government expects to introduce to prove the allegations of the complaint will cover the manner and method whereby National secured control of Pacific, the Los Angeles Transit Lines, the Long Beach City Lines, and the Key System which operates in the Oakland and San Francisco Bay Area in California, as well as the relations between such companies and the supplier appellees other than Phillips. The Government expects to call a substantial number of witnesses from the Pacific Coast Area and the documentary evidence which it will subpoena from companies doing business in that area will form a substantial part of the proof which the Government expects to offer. The Government also expects to subpoena numerous documents from operating subsidiaries of National located on

the Pacific Coast, and from Pacific, Standard, and Federal, which appellees have their principal offices in the State of California. (R. 112-113.)

There are two groups of subsidiaries controlled by National, those primarily directed from Chicago and those primarily directed by local management. The assets of the former total about $29,500,000. This amount is less than the combined assets of the Key System and the Los Angeles Transit Lines, both of which are controlled by National, operate in California, and have been subjected to the restraints charged in the complaint respecting their purchases of busses, tires, tubes, and petroleum products. The sale of products subject to such restraints is far greater on the Pacific Coast than in any other area of the country. During the first eight months of 1946 purchases of motorbusses by the so-called "Chicago operated companies" totaled only $769,681, whereas during the same period the Los Angeles Transit Lines' purchases of motorbusses totaled $2,232,975. (R. 114-115.)

The reply affidavits of City Lines do not controvert any of the foregoing averments made by Government counsel although the reply affidavits represent that some of these averments are irrelevant to the question of *forum non conveniens* (R. 123-132). Likewise uncontroverted is the averment made in the companion criminal case,[7] that a majority of the witnesses who testified before the grand jury which returned the criminal indictment resided in or were from the Pacific Coast area (R. 176).

On the day before the complaint in the instant case was filed, a grand jury for the Southern District of California returned an indictment against the nine present appellees and seven of their officers making the same charges of viola-

[7] This affidavit is part of the record upon which the district court acted in the present case (R. 76).

tion of the Sherman Act as are made in the civil complaint (R. 76-90). In the indictment, however, the following additional facts are set forth (R. 84-85, 89-90):

American, about January 10, 1945, acquired a controlling interest in the Los Angeles Railway Corporation (now known as the Los Angeles Transit Lines) of the city of Los Angeles, California. This purchase was made pursuant to an oral understanding with Federal that $1,074,064, which Federal paid to American, should be used with other funds in acquiring such control, and that Federal should receive certain shares of American's preferred and common stock. Subsequently, pursuant to the same understanding with Federal, the Los Angeles Transit Lines entered into a contract providing that it would, during the next ten years, buy 50% of its requirements of petroleum products from Standard, Federal's parent, and would terminate as rapidly as possible all existing contracts for the purchase of such products from others. On May 1, 1946, this contract was amended to provide that Los Angeles Transit Lines would, during the next ten years, buy all of its requirements of petroleum products from Standard.

In the criminal case the court below filed an opinion on August 14, 1947, holding that the defendants' motion to transfer the proceeding to the Federal District Court for the Northern District of Illinois, Eastern Division, should be granted (R. 91-102).[8] The court stated that while it did not question the Government's motive in instituting the prosecution in the Southern District of California, it was

[8] Defendants' motion was made under Rule 21(b) of the Federal Rules of Criminal Procedure. This Rule reads:

"The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged."

satisfied that a trial there "would impose unnecessary hardships on the defendants and entail unjustifiable expense which it is the object of the new rules of criminal procedure, and especially of the rule under discussion, to avoid" (R. 102).

In the civil case the court filed an opinion on September 29, 1947, holding that the complaint should be dismissed upon the ground of *forum non conveniens* (R. 134-145). The court recognized that the Clayton Act, in the venue provisions of Section 12, is a special venue statute (R. 139). But the court concluded that there was scope for application of the doctrine of *forum non conveniens* under both general and special venue statutes unless, in the case of a special venue statute, its legislative history showed an intent to confer upon the plaintiff an absolute right to the venue of his own selection (R. 139-142). The court was not satisfied that Congress had manifested such purpose as to Section 12 of the Clayton Act and the court, believing that it was thus free to apply the doctrine of *forum non conveniens*, decided that the facts called for dismissal of the complaint on this ground (R. 142-145). The court later filed findings of fact and conclusions of law (R. 151-162) and entered a judgment dismissing the complaint (R. 162-163).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that it has discretion to entertain a motion based upon *forum non conveniens* to dismiss an equity suit brought by the United States under Sections 1 and 2 of the Sherman Act.

2. In holding that the Southern District of California is an inappropriate forum in which to maintain the present suit.

3. In holding that the interests of justice require that this suit be dismissed, without prejudice to the plaintiff commencing a similar suit against the appellees in another forum.

4. In dismissing the plaintiff's complaint.

SUMMARY OF ARGUMENT

I

A. The courts have designed the doctrine of *forum non conveniens* as an "instrument of justice." No single factor or combination of factors requires, as a rule of law, dismissal of a suit upon this ground. Its meaning is no more definite than that, where trial in the forum chosen by the plaintiff does not serve "the ends of justice," a court may resist such "imposition upon its jurisdiction" and dismiss the proceeding. It is a doctrine to be applied only in exceptional circumstances and the plaintiff's choice of forum should rarely be disturbed "unless the balance is strongly in favor of the defendant."

B. When the special venue provisions of Section 12 of the Clayton Act are read in the light of their statutory setting and all other relevant considerations, the maximum scope which it is reasonable to suppose that Congress intended them to have is that a venue which they authorize may not be defeated upon any ground short of a clear showing that the plaintiff had no reasonable basis for the forum of its selection and that suit therein will place upon the defendants and the court of the forum such unnecessary heavy burdens as to frustrate the ends of justice. Numerous statutory provisions manifest the Congressional purpose that civil suits to prevent violations of antitrust laws shall proceed to final determination with the greatest possible dispatch. Full freedom to challenge the appropriate-

ness of the forum would be productive of serious delay, contrary to the purpose of Congress. The multistate character of both the restraints against which the statute is directed and the business of the corporate defendants in such proceedings, and the absence of any clearly defined locus of the alleged illegal conspiracy or combination, make the question whether any particular forum is "convenient" exceedingly complex and enable defendants to call into question, with a show of plausibility, almost any forum which the plaintiff may select. If the Government must at its peril satisfy the court that it has chosen the most appropriate of all available forums, the very latitude as to venue authorized by the statute will operate to entrap the plaintiff.

C. There is solid rational basis for the Government's choice of the southern district of California as the forum for suit; and the court below did not question the Government's good faith in selecting that forum. Not only have appellees entered that district to impose restraints therein on a large scale but they have imposed these restraints through a subsidiary of National located in that district. The restraints have also been imposed as to a greater volume of commerce in the Pacific Coast area than in any other area of the country. In addition, one of the two officers of National most closely concerned with these restraints resides in the southern district of California.

The grounds upon which appellees assert that this district would be an "inconvenient" place of trial are highly speculative and conjectural, of a kind held not to warrant application of the doctrine of *forum non conveniens*. Nor does the relief which the Government has prayed call for detailed and continuous supervision over a corporation domiciled elsewhere, such as would warrant a court in declining jurisdiction in order that the matter might be handled by a court "nearer home."

II

The Clayton Act, in Section 12, is concededly a special venue statute. This Court appears to have held that, while there is room for application of the doctrine of *forum non conveniens* in cases arising under general venue statutes, the doctrine is not applicable to cases under special venue statutes. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 505-506. We submit that there are sound grounds for such a distinction. The very authorization of a particular venue for enforcement of rights created by Congress indicates that such authorization was designed to effectuate the policy of the statute of which the venue provisions are a part and that the courts are therefore not at liberty to narrow the authorized venue upon the basis of generalized considerations embodied in the phrase *forum non conveniens*.

But irrespective of whether or not the distinction between general and special venue statutes gives rise to a general rule of statutory construction, the considerations previously set forth bearing upon the interpretation to be given to Section 12 of the Clayton Act, as well as the legislative history of that Section, lead to the conclusion that Congress intended that the venue which it authorizes should not be defeated upon the ground of *forum non conveniens*.

ARGUMENT

I

Even on the assumption that the doctrine of "forum non conveniens" is applicable, under some circumstances, to civil suits brought by the United States under the antitrust laws, dismissal of the present suit upon the ground of "forum non conveniens" was a clear misapplication of the doctrine

A. *The General Principles Governing Application of the Doctrine*

This Court has recently had occasion to consider and pass upon the doctrine of *forum non conveniens*. A full review

of the cases is therefore not necessary and we shall merely call attention to some of the principles which, under the decisions of this Court, govern application of the doctrine. The question whether there is any room for the doctrine when a suit in a federal court is within authority expressly conferred by a special venue statute of the kind here involved will be left for later discussion (*infra*, pp. 32-39).

The doctrine "was designed as an 'instrument of justice'". *Williams* v. *Green Bay & Western R. R. Co.*, 326 U. S. 549, 554. This basic principle has been variously phrased. No single factor or combination of factors requires, as a rule of law, dismissal of a suitor from the forum; the doctrine is one which "resists formalization and looks to the realities which make for doing justice." *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 527-528. If a proceeding in the venue of the plaintiff's choice would constitute a "misuse of venue," a proceeding therein is an "imposition upon its jurisdiction" which the court may resist. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 507. "In the interest of justice," courts occasionally decline to exercise jurisdiction with which they have been vested when convinced that another forum is the appropriate one (*Canada Malting Co., Ltd.* v. *Paterson Steamships, Ltd.*, 285 U. S. 413, 423), but the doctrine is to be applied in "rather rare cases" (*Gulf Oil* case, *supra*, p. 509). The court will weigh, as between plaintiff and defendant, "relative advantages and obstacles to fair trial," but "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed" (*idem*, p. 508). "Factors of public interest also have place in applying the doctrine" (*ibid.*).

A doctrine of such broad and general contour does not permit of precise categorization nor is it, like a statute, the

starting point for determining what cases fall within its terms. Rather, the doctrine represents legal nomenclature adopted by the courts to express the conclusion which they reach in certain situations. "Wisely, it has not been attempted to catalogue the circumstances which will justify or require either grant or denial of [this] remedy" (*Gulf Oil* case, *supra*, p. 508).[9]

The phrase "forum non conveniens" contains misleading implications.[10] In the context in which used, it connotes, not an "inconvenient" forum in terms of normally understood convenience, but an "inappropriate" forum in terms of propriety. Courts decline to exercise jurisdiction, not on minimal grounds of inconvenience, but only where there are strong and compelling reasons for believing that to retain jurisdiction would not be in the interest of justice. The doctrine is perhaps most frequently applied where it appears to the court that sheer harassment of the defendant has motivated the plaintiff's choice of a forum, where he is thought to be pursuing the strategy of "forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself." *Gulf Oil* case, *supra*, p. 507. See also the *Koster* case, *supra*, p. 531.

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[9] "To trace in advance the precise line of demarcation between the controversies affecting a foreign corporation in which jurisdiction will be assumed and those in which jurisdiction will be declined, would be a difficult and hazardous venture." Cardozo, J., in *Travis* v. *Knox Terpezone Co.*, 215 N. Y., 259, 264, quoted in *Williams* v. *Green Bay & Western R. R. Co.*, *supra*, p. 559.

[10] The phrase is not an ancient one but appears to have been used for the first time in Scottish cases in the latter part of the nineteenth century as a "mere neo-Latin translation of the English phrase [inconvenient forum] already familiar to Scottish judges." Braucher, *The Inconvenient Federal Forum*, 60 Harv. Law Rev. 908, 909.

B. *Venue, as Authorized by the Special Venue Statute Governing Civil Suits Brought by the United States under the Antitrust Laws, may be Rejected, if at all, upon the Ground of "Forum Non Conveniens" only where the Defendant has made a Clear Showing that there is no Substantial Basis for the Venue Selected and that a Proceeding Therein Would be so Burdensome to the Court and to the Parties as to Frustrate the Ends of Justice*

Venue in this proceeding is governed by Section 12 of the Clayton Act, which provides (*supra*, p. 3) that any suit under the antitrust laws against a corporation may be brought not only in the district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business. It is undisputed that, under these statutory provisions, there was venue in the southern district of California. Three corporate defendants, General Motors, Firestone and Standard, were doing business or were found in that district when suit was brought (Fng. 2, R. 152).[11]

It is likewise undisputed that Section 12 is a special venue statute. The court below said that "concededly" this was so (R. 139). If the matter were otherwise in doubt it is set at rest by *Suttle* v. *Reich Bros.*, No. 214, this Term, decided March 8, 1948, where this Court referred to both Section 12 of the Clayton Act and the venue provisions of the Federal Employers Liability Act (45 U. S. C. 56) as examples of "special venue statutes" (slip opinion p. 4). See to the same effect, *Eastman Kodak Co.* v. *Southern Photo Co.*, 273 U. S. 359, 372; *Lumiere* v. *Wilder, Inc.*, 261 U. S. 174, 177-178.

We later contend (*infra*, pp. 32-39) that Congress intended that the special venue provisions of Section 12 should give

[11] Section 5 of the Sherman Act (*supra*, p. 3) authorized the court to summon before it the non-resident defendants. See *United States* v. *Standard Oil Co.*, 152 Fed. 290 (E. D. Mo.), affirmed 221 U. S. 1, 46.

the plaintiff an absolute choice of venue, just as it has been held that the special venue provisions of the Federal Employers Liability Act give the plaintiff an absolute choice of venue.[12] Our present contention is the narrower one, that in any event Section 12, when read in the light of its statutory setting and all other relevant considerations, does not permit defeat of a venue which it authorizes upon any ground short of a clear showing that the plaintiff's choice of venue was made without substantial reason therefor and that a proceeding therein will impose unnecessary and unwarranted burdens upon the defendants and the court of the forum.

Many statutory provisions make abundantly clear the Congressional purpose to assure prompt and authoritative adjudication of civil proceedings brought by the United States under the antitrust laws. Section 4 of the Sherman Act (*supra*, p. 2) provides that these proceedings shall be heard and determined "as soon as may be," and Section 2 of the Expediting Act (15 U. S. C. Supp. V, 29), gives a direct appeal to this Court from the final decree entered in any such case. Section 1 of the Expediting Act, as amended (15 U. S. C., Supp. V, 28), authorizes the Attorney General to file a certificate that a case of this kind is of general public importance, and provides that the three-judge court which is thereupon to be designated shall assign the case for hearing "at the earliest practicable date" and shall expedite it "in every way". By Section 5 of the Sherman Act (*supra*, p. 3) a non-resident defendant may be brought before the court by serving a subpoena to this end in any district.[13] And the wide latitude of venue given by Section 12 of the Clayton Act has already been mentioned.

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[12] *Baltimore & Ohio R. R. Co.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois Central R. R. Co.*, 315 U. S. 698.

[13] See also the like provisions of Section 15 of the Clayton Act, 15 U. S. C. 25.

The concurring opinion in *Miles* v. *Illinois Central R. R. Co.*, 315 U. S. 698, 708, observes that it was unlikely that Congress intended that the venue provisions of the Federal Employers Liability Act should leave the plaintiff in a position where the defendant "could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere." Since Congress has declared, in effect, that expeditious determination of suits by the Government to enforce the antitrust laws is of public concern, we submit that it is unreasonable to suppose that Congress intended that the defendant in such a suit should be free to require the Government, prior to any trial on the merits, to convince the court, upon the basis of opposing affidavits and arguments, that, in view of the proof to be adduced, the issues to be tried, and the relief being sought, the venue of suit is not a "convenient" forum. To leave open the door to such trial of this issue would be productive of countless delays, including probable appeal to this Court when the ruling is adverse to the Government on this preliminary issue.

In a suit by the United States to enforce the antitrust laws, the complexity of the factors pertinent to the issue of *forum non conveniens* argues against recognition of this doctrine or against giving it recognition other than within extremely narrow limits. In such suits the principal defendants are, in practically all cases, corporations doing a multi-state business. The combination or conspiracy which is the basis of suit rarely has a defined locus. It is rarely embodied in a single written instrument and the proof of its existence is drawn from a course of dealing or from communications, memoranda, verbal agreements or written contracts involving various parties and made or entered into at various times. The restraints which the unlawful combination imposes usually have their chief mani-

festation and incidence outside the districts in which the principal offices of the defendant corporations are located.

In these circumstances, the usual signposts to which the courts look in considering the question of *forum non conveniens* practically never point unerringly to a particular forum. It is an inherent characteristic of cases of this kind, charging a group of corporations with conspiring illegally, that, whatever the forum selected by the plaintiff, it will be inconvenient for some defendants and, frequently, for most of them. In the instant case, for example, only two appellees, National and American, have their principal places of business in Chicago,[14] whereas three appellees, Pacific, Standard, and Federal, have their principal places of business in California.

The well-known aspects of antitrust litigation to which we have referred are persuasive that Congress intended that the venue which it established for civil suits brought under the antitrust laws may not be defeated upon the ground of *forum non conveniens* or that Congress at least intended that the scope of this doctrine, as applied to such suits, should be severely circumscribed. And even if the intention of Congress is laid to one side, it remains true that when there is such diffusion of possible venue and when no particular venue is clearly indicated by the signposts which the courts follow in applying the rule of *forum non conveniens*, the foundation for dismissal of a suit under the rule or doctrine is lacking.

This Court has held that Congress intended that the venue provisions of the Federal Employers Liability Act should give to the plaintiff a choice of forum which is absolute (*infra*, p. 32). But in such cases the legal issue

[14] Since it appears that American was merged with National in July 1946 (R. 30-32), there now is only one of the corporations against which the complaint was filed having its main office in Chicago.

ordinarily is comparatively simple and such matters as the place of accident, the witnesses to be called, and the residence of the plaintiff are clearly defined. There would seem to be even stronger reasons for concluding that Congress intended that the venue provisions of the Clayton Act should give the plaintiff a choice which the courts must respect.

The instant case illustrates the extreme hazards attendant upon applying the doctrine of *forum non conveniens* to an antitrust proceeding of the present kind. The court below, in holding that the doctrine called for dismissal of the complaint, undertook to forecast the length of the trial, the principal issues which it would present, the location and character of the proof (documentary and testimonial) likely to be offered, and the tasks which would be cast upon court if the full relief prayed by the Government should be granted.[15] An attempt to make any such forecast not only consumes an inordinate amount of time but necessarily is highly speculative. In the present case we believe that the court below failed to appraise the situation correctly in many important respects. See *infra*, pp. 26-30.

From the fact that Congress granted the Government a choice of venue, it follows as a minimum that any exercise of that choice must be respected unless the court is able to conclude that the Government clearly abused the discretion in selection of venue given it by statute. Certainly a court is not free to pursue the simple inquiry, as did the court below, whether the forum chosen is, in the court's judgment, the most convenient of all available forums. So to hold would mean that the very latitude of choice of venue provided by the Clayton Act would serve to entrap

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[15] Record 143-144. See also the "analysis" of the "facts" which the court made in the companion criminal case (R. 98-101), which analysis it adopted by reference in the instant case (R. 143).

the plaintiff. It would mean that, of the large number of possible forums, the Government must at its peril select the one which, in the judgment of the court in which suit is filed, is the most convenient of all possible forums or face a lawsuit on this issue prior to any hearing on the merits of its charges. If a court regards itself as *forum non conveniens*, it will dismiss the suit and the Government will have to commence its suit elsewhere, usually without any assurance that the process will not be repeated *ad infinitum*.[16]

This Court has said that factors of "public interest" have a place in applying the doctrine *forum non conveniens*, stating: "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin." *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 508. Avoidance or mitigation of precisely such administrative difficulties has a part in selection by the Government of the venue in which to bring an antitrust proceeding. A majority of the larger corporations undoubtedly now have their principal offices in New York, and Chicago would come next in this respect. If the location of the principal offices of the defendant corporations were to be the principal criterion in determing the "convenient" forum for trial, the burden of trying antitrust suits brought by the United States, which frequently involve numerous preliminary motions and comparatively long trials, will be cast upon the federal courts of the southern district

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[16] We do not claim that this might be a consequence of dismissal of the complaint in the instant case. Counsel for appellees filed with the court below a letter stating that if their motion to dismiss is granted and if the Government files a new suit based on the same charges in the district court for the Northern District of Illinois, Eastern Division, they will not move for dismissal of that action upon the ground of *forum non conveniens* (R. 132-133).

of New York and the northern district of Illinois to an even greater degree than at present.[17]

C. *In This Case There Was Substantial Basis for the Venue Selected and a Proceeding Therein Will Not Impose Any Unwarranted Burden upon the Defendants or upon the Court of the Forum*

We submit that there unquestionably is solid rational basis for the Government's decision to have trial of the present cause in the southern district of California. Two important subsidiaries of National, the Long Beach City Lines and the Los Angeles Transit Lines, are located in the district (*supra*, p. 9). And National's acquisition of control of the latter transit system strikingly exemplifies the restraints which the complaint charges. To purchase its securities, National (or its subsidiary American) paid $12,880,000 (R. 115). Standard, which transacts business in the southern district of California, furnished (through its subsidiary Federal) over $1,000,000 of the funds used by American for this purchase and, as a part of the agreement between the parties, a contract was entered into giving Standard the exclusive right, for a period of ten years, to supply all petroleum products required by Los Angeles Transit Lines (*supra*, p. 11).

The history of Pacific and of its relations with other appellees is an important part of the evidence which the

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[17] The Annual Report of the Director of the Administrative Office of the United States Courts—1947, states: "Undoubtedly the most serious condition of accumulating arrears in the Federal judicial system, and one that shows little prospect of improvement under present conditions is that in the Southern District of New York." (*September 1947 Report of the Judicial Conference*, p. 89). See also *idem*, pp. 33, 36.

It is also there stated that of 73 civil antitrust suits brought by the United States pending in the district courts as of August 8, 1947, 24, or 33%, were in the Southern District of New York and eight, or over 10%, were in the Northern District of Illinois (*idem*, pp. 71-73).

Government expects to introduce in support of the charges of its complaint (R. 112). Such evidence concerns matters relating almost exclusively to the Pacific Coast area. Pacific operates and manages local transportation systems located in the States of California, Washington, and Utah (R. 2). Since early in 1940 Pacific's main office has been in California, where its business is managed and its contracts with appellees' suppliers have been executed (R. 26-27). Appellees General Motors, Firestone, and Standard (through Federal), which do business or are found in the southern district of California (R. 152), has each owned a stock interest in Pacific at various times between 1938, when Pacific was organized, until August 1946, when all of its outstanding stock was exchanged for stock of National (R. 2, 26).

One of the five brothers who organized National and who have at all times owned the largest block of its common stock resides in Los Angeles (R. 25, 113). This individual is vice president and operating manager of National, is one of its two officers in charge of purchase of busses, tires, tubes, and petroleum products for its operating subsidiaries, and supervises its operations on the Pacific Coast (R. 113).

It is undisputed that the restraints charged in the complaint were imposed in the southern district of California. In one major item of commerce subjected to these restraints, busses purchased by National's operating subsidiaries, the purchases by a subsidiary located in the southern district of California were, during the first eight months of 1946, almost three times the purchases made during the same period by subsidiaries operated from National's main office in Chicago (*supra*, p. 10). The total commerce subjected to the restraints charged in the complaint is far greater on the Pacific Coast than in any other area of the country in which National's subsidiaries conduct operations

(R. 115). The fact that a majority of the witnesses who testified before the grand jury which returned the indictment in the companion criminal case were from the Pacific Coast area (R. 176) likewise has an important bearing upon the reasonableness of the Government's choice of the southern district of California as the venue in which to file suit. And the court below said that it did not question the motive of the government in instituting suit in this district (*supra*, p. 11).

The district court found that the Antitrust Division of the Department of Justice had an office in Chicago and that "no substantial hardship" will be borne by the Government if trial is held in Chicago (Fng. 10, R. 159). The court made no finding, nor had it any basis for making a finding, as to the availability of judges in the Northern District of Illinois, Eastern Division (Chicago), for hearing this case or the transferred criminal case. Nor did the court find, although it was clearly a matter of which it might have taken judicial notice, that the grand jury proceedings which eventuated in the criminal indictment returned against appellees, were conducted by members of the staff of the Antitrust Division in Los Angeles, including the chief of all of its Pacific Coast offices. To try either of these cases by counsel other than those already familiar with the evidence and the legal issues likely to arise at the trial would obviously be a substantial hardship to the Government, as it would be to draw these counsel away from the limited staff maintained at Los Angeles in order to try the case, and to handle proceedings preliminary to trial, before a judge in a distant district.

We now consider the question of the "inconvenient" forum from the standpoint of appellees. It is clear that, apart from National, none of them has made any serious showing in support of trial of the cause in Chicago rather

than Los Angeles (*supra*, p. 7). As to National, we note that it controls companies doing business in 16 States, of which companies some of the most important are in the Pacific Coast area. Not only is it exercising control over far flung operations ranging from the Atlantic Seaboard to the Pacific and from the South and Southwest to the Northwest (R. 3-4), but the corporations which it controls are of substantial size (*supra*, p. 10). We submit that "the plea of inconvenience loses some of its persuasiveness in the mouth of" a defendant controlling interests of this kind, "particularly one charged with personal wrongdoing."[18] See Braucher, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908, 933.

The averments which are of greatest substance in the present connection are that six of National's chief executive officers would have to attend during the trial and that, according to the advice of counsel, the trial will probably take "a number of weeks" (R. 28-29). How inherently speculative is the averment as to probable length of trial is shown by the fact that the affidavit filed in support of National's motion to transfer the criminal case averred that, according to the advice of counsel, trial will probably take "several months" (R. 172).[19] By interrogatories and requests for admissions, as provided by Rules 33 and 36 of the Federal Rules of Civil Procedure, documentary or other undisputed facts can be established without the calling

[18] It is pertinent to note that the consolidated assets of the supplier appellees on December 31, 1946, as reported in Moody's *1947 Industrial Manual*, are: General Motors, $1,982,000,000 (p. 1635); Standard, $785,000,000 (p. 1865); Phillips, $317,000,000 (p. 2831); Firestone, $288,000,000 (p. 577); Mack, $62,000,000 (p. 1798).

[19] The findings of fact which the court filed in the present case adopt large portions of its opinion in the criminal case. It is a matter of some significance that the second paragraph of Finding 6 (R. 156-157), which is taken from the opinion in the criminal case (R. 98-99), states that the trial "would require the attendance over a period of months" of some of National's "keymen" (R. 156).

of witnesses, and trial thereby appreciably shortened.[20] Furthermore, if appellees wish to avoid calling witnesses from a distance, their testimony can be taken by deposition and the depositions can be introduced in evidence (Rule 26(a), (d) (3)).

The affidavit of National's president avers (R. 29) that the number of witnesses is likely to be at least 100 and that many essential witnesses will come from various parts of the country, but largely from the Chicago area. The observation made by this Court in the *Gulf Oil* case, *supra*, at p. 511, is pertinent, that "litigants generally manage to try their cases with fewer witnesses than they predict in such motions as this." In *International Milling Co.* v. *Columbia Co.*, 292 U. S. 511, 521, this Court said, "The forum being in other respects appropriate, jurisdiction is not lost because * * * the chief witnesses on the trial reside in other states, most of them, it seems, in Chicago, Illinois." This Court then quoted with approval the following from *Denver & R. G. W. R. R. Co.* v. *Terte*, 284 U. S. 284, 287:

> As a practical matter, courts could not undertake to ascertain in advance of trial the number and importance of probable witnesses within and without the State and retain or refuse jurisdiction according to the relative inconvenience of the parties.

If we turn to the question of "convenient" forum from the standpoint of the court itself, we find that a case of this kind does not involve application of the law of some other jurisdiction, with which the federal court of some other dis-

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[20] In *United States* v. *Columbia Steel Co.*, No. 461, this Term, where the Government utilized such procedure, the trial, notwithstanding the importance of the issues involved, lasted only five days.

See also *Associated Press* v. *United States*, 326 U. S. 1, where such procedure, supplemented by affidavits and admissions made in defendants' answers, furnished sufficient basis for entry of judgment against the defendants on the Government's motion for summary judgment.

trict might be more familiar. But the court below concluded that the relief sought by the Government would require control of National, over a long period of time, by a court far removed from its domicile (R. 144). Our answer is that even if the full extent of the Government's prayer for relief should be granted, the relief would not be "so extensive or call for such detailed and continuing supervision that the matter could be more efficiently handled nearer home" (*Williams* v. *Green Bay & Western R. R. Co.*, 326 U. S. 549, 555-556) and that the case presents " 'no problem of administration' of the affairs of a foreign corporation of the sort which would lead a court to decline jurisdiction" (*Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 527).

In its opinion the court below quoted in full, "because of their significance" to the issue before it, paragraphs 5 and 6 of the prayer for relief set forth in the complaint (R. 137). We fail to see any present significance in paragraph 6, which requested the relief customarily granted in a case of this kind when violation of the statute has been found, that the defendants be enjoined from conspiring to monopolize or restrain interstate commerce in the manner described in the complaint, and from engaging in agreements, understandings, or practices having a tendency to revive or continue any of the violations of the statute charged in the complaint.

Paragraph 5 prays that National, American and Pacific be ordered to make such disposition of their interests in local transportation companies "as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy" and that they be enjoined from acquiring any financial interest in any such company without first obtaining the approval of the court. The first part of this prayer may be as easily and as effectively ordered by a court sitting

in Los Angeles as by a court sitting in Chicago. As to the latter part of the prayer, if we assume that it will be granted, which is speculative, the issue presented by any requested approval will not involve any matter within the peculiar competence of a court sitting in Chicago, as distinguished from one sitting in Los Angeles.

Possibly appellees will urge that paragraph 4 of the prayer for relief (R. 9) would, if granted, require control of National for a long period of time. The prayer is that National, American and Pacific and their operating companies be enjoined from purchasing busses, tires, tubes and petroleum products, without first advertising for competitive bids for such supplies pursuant to a plan to be incorporated into and made a part of any final order entered by the court. But upon the entry of such an injunction, the court's function comes to an end, apart from punishment of violations, should they occur. The Government, if it believed that this provision of the decree, or any other provision, had been violated, would bring appropriate contempt proceedings and submit evidence to support its charges to the court which had issued the decree. The power to punish violations of a decree is not an exercise of continuing administrative control over the defendants against whom the decree runs.

There remains the question whether the transfer of the criminal case to Chicago constitutes a reason for dismissing the present case upon the ground of *forum non conveniens*. The district court's opinion does not state that such transfer was one of the reasons for its holding in the civil case, but it made elaborate findings to the effect that trial of the criminal case in Chicago and trial of the civil case in Los Angeles would cause appellees "great hardship and inconvenience" (Fng. 12, R. 160-161).

The Government had no right of appeal from the order of transfer entered in the criminal case. If dismissal of the civil complaint would be unjustified but for the transfer of the criminal case (which we believe was erroneous), such transfer does not supply justification which otherwise was wanting—two wrongs do not make a right. Appellees cannot rely upon such special or additional inconvenience as results from being under the necessity of defending the criminal case in one district and the civil case in another, since this is an inconvenience which they brought upon themselves when they moved to have the criminal case transferred to another district. Any other view would mean that the Federal Rules of Criminal Procedure determine civil procedure.

When the Government believes that there has been a violation of the Sherman Act, it sometimes seeks corrective relief by way of a civil suit filed after, or simultaneously with, the return of a criminal indictment, but when companion proceedings are thus instituted it is only rarely that both are ultimately brought to trial. If it is held on the present appeal that dismissal of the civil complaint was erroneous, the Government will not seek to bring the criminal and the civil cases to trial simultaneously and, in any event, it is highly unlikely that it will be found necessary to bring both cases to trial.[21]

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[21] If the Government obtains a decree in a civil suit, the defendants in a related criminal case usually file pleas of *nolo contendere*. If the criminal case is tried first and verdicts of guilty are returned, there is nothing left for trial in the civil case except the question of relief (*Local 167* v. *United States*, 291 U. S. 293, 298-299), and the parties are customarily able to reach an agreement on this question and dispose of the civil case by the entry of a consent decree.

II

Both the considerations heretofore set forth and the fact that Section 12 of the Clayton Act is a special venue statute lead to the conclusion that in a civil suit by the United States under the antitrust laws, its choice of a forum cannot be defeated upon the basis of "forum non conveniens"

The Federal Employers Liability Act provides (45 U. S. C. 56) that an action under the Act may be brought in a federal district court in the district of the defendant's residence, or in which the cause of action arose, or in which the defendant was doing business at the time of the accident. *Baltimore & Ohio R. R. Co.* v. *Kepner*, 314 U. S. 44, held that these provisions gave to the plaintiff a choice of venue which could not be defeated upon the ground of *forum non conveniens* and that, since this was a right conferred by federal law, a state court was without power to enjoin, upon the basis of *forum non conveniens*, a suit under the Act brought in a federal court. The Court pointed out (pp. 49-50) that, under the Act as first passed, the venue of actions under it was left to the general venue statute, which fixed venue in the district of the defendant's residence, and that Congress, believing that such venue was too narrow, adopted the present venue provisions. The Court said (p. 54):

> A privilege of venue, granted by the legislative body which created this right of action, cannot be frustrated for reasons of convenience or expense.

Miles v. *Illinois Central R. R. Co.*, 315 U. S. 698, held that suits under the Act brought in a state court also cannot be defeated upon the ground of *forum non conveniens*. This Court therefore reversed the decision of a state court enjoining, upon the ground of *forum non conveniens*, a suit under the Act brought in the courts of another state.

Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501, was a suit based upon diversity of citizenship. This Court, in holding that the complaint had properly been dismissed upon the ground of *forum non conveniens*, stated (p. 505) that the non-application of the doctrine to suits under the Federal Employers Liability Act was "because the special venue act under which those cases are brought was believed to require it." "Those decisions," the Court said (*ibid.*), "do not purport to modify the doctrine as to other cases governed by the general venue statutes." It further said (p. 506) that the Federal Employers Liability Act "specifically provides where venue may be had" and "increases the number of places where the defendant may be sued" whereas a general venue statute means only that "it is proper for the federal court to take jurisdiction, not that the plaintiff's choice cannot be questioned."

Although the opinion in the *Gulf Oil* case appears to indicate that a distinction is to be drawn between special and general venue statutes, the court below concluded (R. 139-142) that this interpretation could not be accepted in view of the decision in *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518. This was a derivative stockholder's suit and the statute governing venue (28 U. S. C. 112) provides that suit in such a case may be brought in the federal courts in any district in which suit against the defendant or defendants, other than the corporation whose rights the plaintiff seeks to enforce, might have been brought by such corporation. But this is not a special venue statute within the meaning of the distinction drawn in the *Gulf Oil* case, as the opinion in the *Koster* case makes clear. The Court there said (note 2, pp. 522-523) that the venue statute governing the stockholder's derivative suit "is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought

in any district in which the corporation could have been sued."

We submit that the distinction between general and special venue statutes is not technical and formal, but is rooted in substance. Where Congress has created rights and has specified the jurisdiction and venue for enforcement of these rights, it is to be inferred that Congress has shaped the venue provision to implement attainment of the objectives of the statute of which the special venue provision is a part. It must be presumed, in other words, that Congress authorized a particular venue for the purpose of effectuating the public policy embodied in the statute and did not intend to permit a narrowing of such venue upon the basis of *forum non conveniens*. These considerations are obviously absent when Congress enacts a general venue statute, such as that which applies when federal jurisdiction is founded on diversity of citizenship.

We further submit that, irrespective of whether this Court has drawn or should draw a distinction between special and general venue statutes, Section 12 of the Clayton Act is to be interpreted as giving to the plaintiff an absolute choice of venue. We believe that any other interpretation would be inconsistent with the purpose of Congress that civil suits by the United States under the antitrust laws should be brought to a final determination as rapidly as possible (see *supra*, p. 19). Other considerations pointing in the same direction are that the violation of law which these suits are designed to prevent seldom, if ever, has a defined locus and that the corporate defendants in the proceedings for which Section 12 fixes the venue are in nearly all cases large concerns engaged in multi-state business operations (*supra*, p. 20).

The Sherman Act as first enacted contained no provision fixing the venue of actions under the Act brought by the United States and the venue of such suits, just as the venue

of suits under the original Employers Liability Act, was left to the general venue statutes.[22] However, Section 7 of the Act, which was superseded by Section 4 of the Clayton Act (15 U. S. C. 15), provided that private suits for treble damages might be brought in the district in which the defendant either resided or was found. The bill which eventuated in the Clayton Act, as reported by the House Judiciary Committee, provided (Section 10) that "any suit" under the antitrust laws against a corporation, i.e., a suit by the United States or by a private party, may be brought in any district where the defendant resides or "may be found."[23] The House passed the bill after amending this venue provision so as to give venue also where a defendant corporation "has an agent," and the Senate Judiciary Committee, in reporting the House Bill, substituted for these words the words "transact any business."[24] The venue provision as thus reported is that which was finally enacted except that the word "any" in the phrase just quoted was dropped.

In the course of the House debate Representative Floyd stated that the provision of the bill authorizing venue where a corporation is found "has the approval of the Attorney General" and that this provision was designed "to enable him to have greater liberty in bringing these [antitrust] suits."[25] Congressman Webb, who was the senior House conferee when the bill went to conference, in explaining the provisions of the bill as agreed upon in conference, said of Section 12 that "we are liberalizing the procedure in the courts in order to give the individual who is damaged the right to get his damages anywhere—anywhere you can

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[22] Section 51 of the Judicial Code, as it stood at the time the Clayton Act was passed, provided that no civil suit shall be brought in any federal district court against any person in any district other than that of which he is a resident (36 Stat. 1101).

[23] H. Rep. No. 627, 63d Cong., 2d Sess., p. 4.

[24] S. Rep. No. 698, 63d Cong., 2d Sess., p. 73.

[25] 51 Cong. Rec., pt. 10, 9415.

catch the offender, as is suggested by a friend who is sitting near by." [26]

Lower federal courts have held, aside from the decision now under review, that the venue provisions governing suits under the federal antitrust laws confer upon the plaintiff a choice of venue which is absolute. In *Momand v. Paramount Pictures Distributing Co.*, 19 F. Supp. 102 (D. Mass.) the court held that it lacked power to dismiss upon the ground of *forum non conveniens* a triple damage suit brought under the Sherman Act. In *Fifth and Walnut, Inc.* v. *Loew's, Inc.* (Civil No. 36,736, S. D. N. Y.), decided January 23, 1948, which was a suit under the Sherman Act against corporate defendants, the court held that Section 12 of the Clayton Act gives to the plaintiff a choice of forum which cannot be defeated upon the basis of *forum non conveniens*. The court said that the decision of the court below in the instant case "cannot be accepted," and the court further said: "It appears to be an attempted judicial limitation of a clear and definite special venue act affording plaintiffs a privilege of venue, which should not be denied them." In *United States* v. *Phillips Screw Co.* (Civil No. 47C147, N. D. Ill.) the court, without opinion but following oral argument, entered an order on October 2, 1947, denying the motions of the corporate defendants to dismiss this antitrust proceeding on the ground of "inconvenient" forum. See also *United States* v. *Standard Oil Co.*, 7 F. R. D. 338, 339 (S. D. Cal.) where a like motion, which the defendants had not pressed, was denied.[27]

[26] 51 Cong. Rec., pt. 16, 16274.

[27] *Securities & Exchange Comm.* v. *Wimer* (Civil Action No. 6774 W. D. Pa.), decided January 21, 1948, was a proceeding to enjoin certain alleged violations of the Securities Act of 1933, for which venue was fixed by Section 20(b) or 22(a) of the Act (15 U. S. C. 77t (b), 77v (a)). The court held that the privilege of venue conferred by these special venue provisions of the Act was absolute and that the court therefore did not have discretionary power to dismiss the action on the ground of *forum non conveniens*.

Between October 15, 1914, when the Clayton Act became law, and January 15, 1947, the United States instituted 319 civil suits under the Sherman Act or (in a few instances) under the Clayton Act.[28] Prior to 1947 no defendant in any of these proceedings has, as far as we are aware, sought dismissal of the complaint by reason of *forum non conveniens*. We submit that the conclusion to be drawn is that the numerous counsel who have represented the defendants in these cases have interpreted Section 12 of the Clayton Act as giving to the plaintiff a choice of venue not defeasible under this doctrine.

The court below said that the provisions of Section 5 of the Sherman Act indicate that Congress did not intend that Section 12 of the Clayton Act should "deprive the courts of their right to forbid resort to an inappropriate forum" (R. 142). The court noted that Section 5 provides that whenever it shall appear to a court before which a proceeding under Section 4 of the Act is pending, "that the ends of justice require" that non-resident parties be brought before the court, the court may cause them to be summoned by means of subpoenaes served upon them in any district. The court believed that the words of Section 5 quoted above show that Congress did not intend to give to the Government "complete mastery over the situation."

The interpretation which the court below gave to Section 5 is directly contrary to that given it in *United States* v. *Standard Oil Co.*, 152 Fed. 290 (E. D. Mo.). That was a proceeding under the Sherman Act against some 70 corporations only one of which was a resident of the district in which suit was filed, while many of the corporate defendants had their principal offices in the East, particularly in and around New York. After the court had entered an order

[28] Count of civil cases reported in *The Federal Antitrust Laws* (C. C. H. 1947).

to bring in the non-resident defendants and to serve subpoenaes upon them in the districts in which they resided, all non-resident defendants joined in a motion to vacate this order and to quash the service of subpoenaes upon them. The court, in denying this motion, said (p. 296) that the question whether the ends of justice would be more completely served by prosecution of the suit in some other district "is not open to the consideration or adjudication of this court." The court said further (*ibid.*):

> The Congress did not confer jurisdiction, in this class of cases, upon the Circuit Court in whose district the largest number of conspirators resided, but upon every Circuit Court in whose district a resident conspirator could be found and served with process. It did not grant to any of the Circuit Courts the power to select the court in which the United States should institute its suit. If it had done so, each court might have selected another. It left the complainant free to commence its suit in any Circuit Court in which it could find and serve a resident conspirator. • • •
>
> The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded.

This Court, on appeal to it following adjudication of the case on the merits, said (*Standard Oil Co. v. United States*, 221 U. S. 1, 46):

> We are of opinion that in consequence of the presence within the district of the Waters-Pierce Oil Company, the court, under the authority of §5 of the Anti-trust Act, rightly took jurisdiction over the cause and properly ordered notice to be served upon the non-resident defendants.

Possibly appellees will urge that it is anomalous if the court lacks power to dismiss a proceeding of the present kind upon the ground of *forum non conveniens*, when Rule 21(b) of the Federal Rules of Criminal Procedure empowers district courts to transfer criminal cases, including those under the Sherman Act, to another district if the court is satisfied that such transfer is "in the interest of justice." But the suggested anomaly is apparent rather than real. Under our legal system the rights of those accused of crime have traditionally been zealously safeguarded. It is not necessarily appropriate to accord to corporate defendants in corrective civil antitrust proceedings all the procedural safeguards granted to defendants in punitive criminal cases. Finally a rule of criminal procedure adopted more than twenty years later is not a guide to the intent of Congress when it enacted the special venue provisions of the Clayton Act.

CONCLUSION

It is respectfully submitted that the judgment of the district court should be reversed.

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